

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

REC'D TO
REGULATORY AUTH.

**IN RE: SMALL TELEPHONE COMPANIES'
FILINGS REGARDING RECLASSIFICATION
OF PAY TELEPHONE SERVICE AS REQUIRED
BY FEDERAL COMMUNICATIONS COMMISSION
(FCC) DOCKET 96-128**

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) **DOCKET NO. 97-01181**
) OFFICE OF THE
) EXECUTIVE SECRETARY

COMMENTS OF TENNESSEE PAYPHONE OWNERS ASSOCIATION

The Tennessee Payphone Owners Association ("TPOA") submits the following comments in response to the April 24, 2001, request of the Hearing Officer.

1. How should the Authority set rates for the small incumbent local exchange carriers (ILECS) consistent with Section 276 of the Telecommunications Act of 1996, related FCC orders, and the Authority's decisions in Docket No. 97-00409?

TPOA's Response: As the Authority determined in Docket 97-00409 (the large LEC payphone docket), every incumbent local exchange telephone company must charge payphone rates which are consistent with Section 276 of the 1996 federal Telecommunications Act, non-discriminatory, cost-based, and consistent with the FCC's "New Services" test. Such rates must be applied retroactively to April 15, 1997.

In January, February, and March, 1997, each carrier in this docket (the small LECs) filed tariffs which, the carriers alleged, were consistent with state and federal law. The TRA entered an order on April 4, 1997 approving these tariffs "pending the outcome of a contested case." Interim Order of February 1, 2001, in Docket 97-00409.

Those tariffs were not based on cost studies and do not, except by coincidence, reflect the actual costs of providing payphone service. Since the carriers bear the burden of proof to

demonstrate that their payphone tariffs are consistent with state and federal law, each carrier must therefore file the following information, as described by the FCC, to show that the carrier's rates are cost-based and consistent with the New Services test:

[T]he incumbent LECs should file a copy of a tariff and supporting information, in accordance with the ordinarily applicable Commission rules (e.g., usage-sensitive elements whether specified in the payphone line tariff or cross-referenced to another tariff as well as flat rate elements) and should provide cost support for each rate element in accordance with the cost support requirements described below. Rates, terms and conditions for other services commonly used by payphone service providers ("PSPs") (e.g., call screening services) should also be included. For each rate element, the incumbent LEC must submit complete cost studies with full documentation. Summaries of cost study results are not acceptable.¹

In the absence of such cost data, a LEC cannot demonstrate --- and the Authority has no basis upon which to find --- that a LEC's payphone rates are consistent with the FCC's guidelines as adopted by the Authority.

Therefore, the Authority should set rates for the incumbent LECs in this docket by directing them to file cost studies which are consistent with the FCC's instructions as described above and with the TRA's findings and conclusions in Docket 97-00409. Such studies must be based on the use of a forward-looking cost methodology (i.e., TELRIC or TSLRIC) as required by the New Services test. (The FCC's *Computer III* pricing guidelines, i.e., the New Services test, have always required the filing of forward-looking cost studies, which is why the Bell carriers developed and filed TSLRIC studies in support of rates for new services. See *Open Network Architecture Tariffs of Bell Operating Companies*, Order, 9 FCC Rcd. 440, 455 (1993).) As the TRA ruled in Docket 97-00409, such studies must be payphone specific and

¹ In the Matter of Wisconsin Public Service Commission, Order Directing Filings, Common Carrier Bureau No. 001, Order released March 2, 2000, paragraph 7.

identify the “direct costs” of payphone services and justify a “reasonable allocation” of overhead costs. Along with the studies, each carrier should also file testimony setting forth the carrier’s proposed payphone rates and explaining, in detail, how those rates are derived and how they are consistent with the four-part test required by the FCC.

2. Should the small ILECs be given an opportunity to adopt wholly or partially the cost models used by the parties in Docket No. 97-00409, as adjusted by the Authority?

TPOA’s Response:

The focus of this docket is how to arrive at payphone rates that are, among other things, cost-based and will “promote the widespread deployment of payphone services.” 47 U.S.C. § 276 (b) (1). Each LEC has the obligation to demonstrate that its payphone rates are consistent with those requirements. If a small LEC determines that a cost model developed by another, larger carrier will serve that purpose, the small LEC is free to adopt that model, in whole or in part, and file it with the Authority. But the use of a cost model developed by another carrier does not in any way relieve the small LEC of its burden to defend both the use of the model and the results produced by the model.

3. Should the small ILECs be given an opportunity to adopt wholly or partially the permanent rates approved by the Authority in Docket No. 97-00409?

TPOA’s Response:

Each carrier’s costs are, of course, unique to that carrier. Therefore, no carrier should be able to simply “adopt” the TRA-approved rates of another carrier and pretend that those rates are “cost-based.” To the contrary, unless a carrier conducts a cost study of its own, the carrier could hardly purport to defend the legality of rates borrowed from another company. As a matter of law, the mere adoption of another carrier’s rates would be insufficient to meet the carrier’s burden of proof to establish that the adopted rates are consistent with the FCC’s requirements.

On the other hand, since the TRA-approved payphone rates for BellSouth and Citizens are approximately the same—despite the wide variation in the service areas of the two carriers-- it would be reasonable for the parties to this docket to agree that those rates, if adopted by the small LECs, would be consistent with the FCC's guidelines. Based on such a stipulation among the parties, the TRA could reasonably approve those rates as being consistent with state and federal law. Similarly, those rates could also be applied to the small LECs as interim rates, subject to true-up, pending the submission of cost studies and the establishment of permanent rates by the TRA.

4. Will the proceedings for the small ILECs require evidentiary hearings? If so, should the hearings be conducted separately or in a consolidated proceeding?

TPOA's Response: Unless the parties reach some kind of settlement, as described above, the determination of cost-based rates will presumably require the filing of exhibits and testimony and, if requested by any party, an evidentiary hearing. Whether these hearings could be conducted separately or in a consolidated proceeding depends upon how many parties settle and how many chose to present cost studies.

5. What procedural schedule should the Authority adopt for the proceedings?

TPOA's Response: The Hearing Officer should direct all LECs in this proceeding to adopt, on an interim basis, the TRA-approved payphone rates filed by BellSouth, subject to true-up, pending the determination of permanent, cost-based rates for each carrier. If a small LEC does not have the capability to measure usage on a payphone line, the carrier should adopt the TRA-approved flat rate filed by Citizens. The adoption of interim rates would give payphone providers immediate relief, on a going-forward basis, and finally accomplish, at least in part, the long-awaited purpose of this four-year-old proceeding. Second, the Hearing Officer should

direct each LEC to file, within sixty days, revised payphone tariffs, supporting cost studies, and testimony, consistent both with the FCC's instructions as described and with the TRA's findings and conclusions in Docket 97-00409. Following the filing of that information, the TRA should issue a procedural schedule which allows a reasonable period for discovery, the filing of testimony, and a hearing, if requested by a party..

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CERTIFICATE OF SERVICE

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